HOUSE RESEARCH ORGANIZATION • TEXAS HOUSE OF REPRESENTATIVES
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HOUSE RESEARCH ORGANIZATION

daily floor report

Sunday, May 21, 2017
85th Legislature, Number 77
The House convenes at 2 p.m.
Part Two

Thirty-three bills are on the daily calendar for second-reading consideration today. Bills on the General State Calendar analyzed or digested in Part Two of today's *Daily Floor Report* are listed on the following page.

Dwayne Bohac
Chairman
85(R) - 77

HOUSE RESEARCH ORGANIZATION

Daily Floor Report

Sunday, May 21, 2017

85th Legislature, Number 77

Part 2

SUBJECT: Updating a city's eligibility to establish homestead preservation districts

COMMITTEE: Urban Affairs — committee substitute recommended

VOTE: 7 ayes — Alvarado, Leach, Bernal, Elkins, Isaac, J. Johnson, Zedler

0 nays

SENATE VOTE: On final passage, May 8 — 24-7 (Burton, Creighton, Hall, Hancock, Huffines, Schwertner, V. Taylor)

WITNESSES: None

BACKGROUND: The 79th Legislature in 2005 enacted HB 525 by Rodriguez, allowing certain cities to establish homestead preservation districts. These districts are designed to promote a city's ability to increase home ownership, provide affordable housing, and prevent low-income and moderate income homeowners living in disadvantaged neighborhoods from losing their homes.

Under Local Government Code, ch. 373A, which was added by HB 525, eligible cities may create a homestead preservation reinvestment zone to develop or redevelop affordable housing. A city that designates a homestead preservation district also may provide tax-exempt bond financing, density bonuses, or other incentives to increase the supply of affordable housing and maintain the affordability of existing housing for low-income and moderate-income families.

Observers note that the city of Austin has outgrown the requirements initially created for a municipality to be eligible to establish homestead preservation districts and reinvestment zones. Concerned parties suggest that updating the eligibility requirements would allow the cities of Austin and San Antonio to prevent the displacement of low-income and moderate-income families in neighborhoods with rapidly increasing home values.

DIGEST: CSSB 1656 would allow a municipality to be eligible to establish

homestead preservation districts and reinvestment zones if it had a population of 750,000 and was located in a uniform state service region with fewer than 800,000, instead 550,000, occupied housing units. A municipality that contained more than 75 percent of the population of a county with a population of 1.5 million or more also would be eligible to establish homestead preservation districts and reinvestment zones.

The provisions would still apply if the municipality's population or the number of occupied housing units changed and the municipality no longer met the population requirement established by the bill.

The bill would take effect September 1, 2017.

NOTES:

A companion bill, HB 3281 by E. Rodriguez, was approved by the House on May 9 and is scheduled for a public hearing in the Senate Intergovernmental Relations Committee on May 21.

SUBJECT: Modifying requirements for de novo hearings

COMMITTEE: Human Services — committee substitute recommended

VOTE: 7 ayes — Raymond, Frank, Miller, Minjarez, Rose, Swanson, Wu

0 nays

2 absent — Keough, Klick

SENATE VOTE: On final passage, April 26 — 30-1 (V. Taylor), on Local and Uncontested Calendar

WITNESSES: No public hearing

BACKGROUND: Family Code, sec. 201.2042 requires a party requesting a de novo hearing before the referring court to file notice with the referring court and the court's clerk. Sec. 201.015 requires the referring court, after notice to the parties, to hold a de novo hearing within 30 days after the date on which the initial request for the hearing was filed with the referring court's clerk.

Observers have noted that some referring courts do not hold de novo hearings for suits affecting the parent-child relationship within the statutorily required time frame, which can delay a child's ability to find permanency. Some suggest that extending the deadline by which a referring court had to hold a de novo hearing and requiring child protection cases to be heard before other pending matters would address inefficiencies in court proceedings.

DIGEST: CSSB 1444 would require suits affecting the parent-child relationship to receive precedence over other pending matters to ensure a court reached a prompt decision. The bill would require parties who requested a de novo hearing to also notify the associate judge.

The bill would prohibit a party from requesting a de novo hearing on a default judgment or an agreed order. The referring court, after giving notice to the parties, would have to hold a de novo hearing on an associate

judge's proposed final order or judgment following a trial on the merits for suits affecting the parent-child relationship, and no later than 45 days after the date the initial request was filed.

Unless the referring court rendered an order disposing of the de novo hearing request within 45 days, the request for a de novo hearing would be considered denied by the referring court. If the referring court had not held a de novo hearing on an associate judge's proposed order or judgment within the required time after the date the initial request for a de novo hearing was filed, the bill would allow a party to file a petition for a writ of mandamus to compel the referring court to hold a de novo hearing. The date the hearing request was denied would be the controlling date for the purpose of an appeal to, or a request for other relief from, a court of appeals or the Texas Supreme Court.

The bill would repeal provisions regarding the effect a de novo hearing in the referring court would have on the finality of proposed orders or judgments rendered by an associate judge for suits affecting the parent-child relationship.

The bill would take effect September 1, 2017, and would apply to a request for a de novo hearing that was filed on or after that date.

SUBJECT: Requiring attorneys in guardianship proceedings to be certified

COMMITTEE: Judiciary and Civil Jurisprudence — favorable, without amendment

VOTE: 8 ayes — Smithee, Farrar, Gutierrez, Hernandez, Laubenberg, Murr, Neave, Schofield

1 nay — Rinaldi

0 absent

SENATE VOTE: On final passage, May 20 — 30-0

WITNESSES: No public hearing

BACKGROUND: Estates Code, sec. 1054.201 requires an attorney for an applicant for guardianship and a court-appointed attorney in a guardianship proceeding, including an attorney ad litem, to be certified by the State Bar of Texas as having successfully completed a course of study in guardianship law and procedure.

DIGEST: SB 37 would require an attorney representing any person's interests in a guardianship proceeding to be certified by the State Bar of Texas as having successfully completed a course of study in guardianship law and procedure. The bill also would require the state bar to provide a course of instruction for attorneys who represent any person's interests in guardianship cases.

The bill would take effect September 1, 2017, and would apply only to guardianship proceedings filed on or after the effective date.

SUPPORTERS SAY: SB 37 would increase the quality of legal representation in guardianship cases. Currently, most attorneys participating in these cases are required to complete a four-hour certification course prepared by the State Bar of Texas on guardianship and alternatives to guardianship. However, the existing certification requirements apply only to attorneys for an applicant for guardianship and court-appointed attorneys in guardianship

proceedings. Because the certification requirements do not apply to attorneys representing interested parties intervening in the litigation, those attorneys may not be sufficiently familiar with guardianship law, which can negatively affect the efficiency of the proceedings.

The bill would not burden attorneys with excessive certification requirements because attorneys in Texas already are required to complete 15 hours of continuing legal education each year. The four hours of training for a certification under the bill would count toward the continuing legal education requirement.

SB 37 would not be overly demanding on the number of attorneys available because even in more sparsely populated counties, there are enough certified attorneys to represent the applicant, the respondent, and to serve as an ad litem in every guardianship case. It would not be difficult for certified attorneys' pools to also cover the smaller subset of cases in which a third party intervened.

OPPONENTS SAY:

SB 37 would burden attorneys with an extra level of certification and would limit the pool of available attorneys for guardianship proceedings. The bill could make it more difficult for an intervening third party to find attorney services. This would be an unnecessary expansion of regulation and government.

SUBJECT: Creating the Texas Forensic Science Commission operating account

COMMITTEE: Appropriations — favorable, without amendment

VOTE: 23 ayes — Zerwas, Longoria, Ashby, G. Bonnen, Cosper, Dean, Giddings, Gonzales, González, Howard, Koop, Miller, Muñoz, Perez, Phelan, Raney, Roberts, J. Rodriguez, Rose, Sheffield, Simmons, VanDeaver, Walle

0 nays

4 absent — Capriglione, S. Davis, Dukes, Wu

SENATE VOTE: On final passage, April 19 — 30-1 (Hall), on Local and Uncontested Calendar

WITNESSES: No public hearing

BACKGROUND: Code of Criminal Procedure, art. 38.01 establishes the Texas Forensic Science Commission. The commission's duties include investigating allegations of professional negligence or professional misconduct by forensic laboratories, conducting certain other investigations of forensic analysis to advance the integrity and reliability of forensic science in Texas, managing the crime laboratory accreditation program, and coordinating education and training programs on forensic science.

Under Code of Criminal Procedure, art. 38.01, sec. 4-a, the commission also is responsible for licensing forensic analysts and has authority to set the fee for the license. All forensic analysts must be licensed beginning January 1, 2019.

DIGEST: SB 298 would create the Texas Forensic Science Commission operating account in the general revenue fund. The commission would be required to deposit to the credit of the account fees collected for the issuance or renewal of a forensic analyst license. Money in the account could be appropriated only to the commission for the administration and enforcement of the article.

The bill would take effect September 1, 2017.

NOTES:

According to the Legislative Budget Board's fiscal note, the license fees are expected to generate $70,000 annually, beginning in fiscal 2019. The commission estimates that 700 forensic analysts would pay a fee of $100 during the first year of licensing and that annual renewal fees of $100 per licensee would be paid beginning in fiscal 2020.

SUBJECT: Allowing computers refurbished by TDCJ to go to youths in foster care

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 11 ayes — Cook, Giddings, Craddick, Farrar, Geren, K. King, Kuempel, Meyer, Paddie, E. Rodriguez, Smithee

0 nays

2 absent — Guillen, Oliveira

SENATE VOTE: On final passage, April 19 — 31-0, on Local and Uncontested Calendar

WITNESSES: No public hearing

BACKGROUND: Government Code, sec. 497.012 authorizes the Texas Department of Criminal Justice (TDCJ) to receive surplus or salvage data processing equipment from state agencies and from political subdivisions. If TDCJ determines that it is economically feasible, it is required to repair or refurbish the surplus or salvage equipment. TDCJ must sell the repaired or refurbished data processing equipment to school districts, state agencies, or political subdivisions of the state, in that order of preference.

In fiscal 2016, TDCJ distributed about 7,900 computers at no cost through this process, mainly to schools. TDCJ recovers its expenses for the program by recycling some equipment and through other means. Some would like to expand the distribution of the equipment to include youths in foster care associated with court-appointed special advocate programs.

DIGEST: SB 78 would add to the list of entities that may receive repaired or refurbished data processing equipment from the Texas Department of Criminal Justice to include certain statewide and volunteer organizations involved in court-appointed advocacy programs for use by youth in foster care. These groups would be junior in preference to the three entities in current statute.

The bill would take effect September 1, 2017.

NOTES: A companion bill, HB 1883 by Price, was referred to the House Committee on State Affairs on March 13.

SUBJECT: Modifying laws on power of attorney, supported decision-making

COMMITTEE: Judiciary and Civil Jurisprudence — favorable, without amendment

VOTE: 9 ayes — Smithee, Farrar, Gutierrez, Hernandez, Laubenberg, Murr, Neave, Rinaldi, Schofield

0 nays

SENATE VOTE: On final passage, April 5 — 30-0

WITNESSES: No public hearing

BACKGROUND: Under the Supported Decision-Making Act (Estates Code, ch. 1357), an adult with a disability may voluntarily enter into a supported decision-making agreement with another adult, called the supporter. Under an agreement, the adult with a disability may authorize the supporter to do any of the following:

- provide supported decision-making, including assistance in understanding the options, responsibilities, and consequences of the adult's life decisions, without making those decisions on behalf of the adult with a disability;
- assist the adult in accessing, collecting, obtaining, and understanding information that is relevant to a given life decision; and
- assist the adult in communicating the adult's decisions to appropriate persons.

Some observers suggest making modifications to laws governing arrangements used to support people who are incapacitated or have a disability, such as by addressing situations where two people may have conflicting authority to make financial decisions on behalf of a person with diminished capacity and clarifying the role of supporters in supported decision-making agreements.

DIGEST: SB 39 would revise certain laws related to powers of attorney, supported

decision-making agreements, and guardianships.

Revocation of a power of attorney. SB 39 would provide that if a court appointed a permanent or temporary guardian of the estate after a principal executed a durable power of attorney, the authority of the attorney in fact or agent named in the power of attorney would be automatically revoked or suspended, respectively. However, in the case of a temporary guardian appointment, if the court entered an order that affirmed the power of attorney and confirmed the validity of the appointment of the attorney in fact or agent, the power of attorney would not be suspended.

SB 39 would create a procedure for removing an attorney in fact and appointing a successor. The bill would identify who could file a petition for removal and would authorize a probate court to enter an order removing the attorney in fact, authorizing the appointment of a successor, and addressing certain compensation issues. The court could enter such an order if the attorney in fact had breached his or her fiduciary duties, materially violated the terms of the durable power of attorney, was incapacitated, or failed to make a required accounting.

The above provisions would apply to a durable power of attorney executed before, on, or after the effective date of the bill.

The bill also would amend the statutory durable power of attorney form to account for the possibility of an attorney in fact being removed by court order. Changes would apply to a form executed on or after the effective date of the bill.

Supported decision-making agreement. SB 39 would define the fiduciary duties a supporter owed an adult with a disability under a supported decision-making agreement. These duties would apply regardless of whether the statutory form was used. The bill would provide that the relationship was one of trust and confidence and did not undermine the decision-making authority of the adult. The supported decision-making agreement would be terminated if a temporary or permanent guardian of the person or estate was appointed for the adult.

The bill would allow the adult to designate an alternative supporter in certain circumstances to avoid potential conflicts of interest. The bill would apply to a supported decision-making agreement entered into before, on, or after the bill's effective date.

The bill would amend the statutory supported decision-making agreement form to specify certain duties the supporter owes to the adult, namely to:

- act in good faith;
- act within the authority granted in the agreement;
- act loyally and without self-interest; and
- to avoid conflicts of interest.

The bill would apply to the statutory supported decision-making form entered into on or after the bill's effective date.

Intervention in guardianship proceeding. Any person entitled to notice of a guardianship application, including the children or sibling of a proposed ward, would not need to file a motion to intervene and participate in a guardianship proceeding. This provision would apply to a guardianship proceeding pending or commenced on or after the bill's effective date.

Omitting addresses. The bill would expand who may omit their address from an application to appoint a guardian from only those persons who are under certain protective orders to include also those persons who were at one time under a protective order. The bill would apply to a guardianship application filed on or after the bill's effective date.

The bill would take effect September 1, 2017.

SUBJECT: Requiring the electronic recording of custodial interrogations

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 6 ayes — Moody, Hunter, Canales, Gervin-Hawkins, Hefner, Wilson

1 nay — Lang

SENATE VOTE: On final passage, April 24 — 25-5 (Huffman, Nichols, Schwertner, L. Taylor, V. Taylor)

WITNESSES: No public hearing

BACKGROUND: Code of Criminal Procedure, ch. 2 governs the general duties of law enforcement officers, including peace officers, magistrates, and prosecuting attorneys.

DIGEST: SB 1253 would require every custodial interrogation in which a person being interrogated was suspected of committing or charged with certain felonies to be electronically recorded, unless good cause existed that made electronic recording infeasible. The bill would require audiovisual recording, or an audio recording if audiovisual recording was unavailable. The felonies would include:

- murder;
- capital murder;
- kidnapping;
- aggravated kidnapping;
- trafficking of persons;
- continuous trafficking of persons;
- continuous sexual abuse of a young child or children;
- indecency with a child;
- improper relationship between educator and student;
- sexual assault;
- aggravated sexual assault; or
- sexual performance by a child.

The recording would have to be authentic, accurate, and unaltered, and would have to begin at or before the time the person being interrogated entered the area of the place of detention where the custodial interrogation would take place or the location where the suspect received a Miranda warning, whichever was earlier. The recording would have to continue until the end of the interrogation.

The bill would define a place of detention as a police station or other building that was a place of operation for a law enforcement agency that was owned or operated by the agency for the purpose of detaining persons in connection with a suspected violation of a penal law. The term would not include a courthouse.

No statement produced from a custodial interrogation would be admissible in a criminal trial unless the interrogation was electronically recorded or the prosecuting attorney could show that good cause existed that made an electronic recording infeasible. For the purposes of the bill, good cause would include:

- the person being interrogated refused to respond or cooperate in a recorded custodial interrogation, provided that the refusal itself was recorded or the law enforcement officer conducting the interrogation attempted to record the person's refusal but the person was unwilling to have the refusal recorded and the officer documented the refusal in writing at that time;
- a statement that was not made as the result of a custodial interrogation, including spontaneous statements by the accused that were not in response to a question by a peace officer;
- a law enforcement agent attempted in good faith to record the interrogation, but the equipment malfunctioned, or the agent inadvertently operated the equipment incorrectly, or the equipment malfunctioned or stopped recording unbeknownst to the agent;
- exigent public safety concerns prevented or made infeasible making an electronic recording; or
- the agent conducting the interrogation reasonably believed at the time the interrogation began that the person was not taken into custody or being interrogated for one of the eligible offenses.

A recording of a custodial interrogation under the bill would be exempt from public disclosure under the Public Information Act.

The bill would take effect September 1, 2017, and would apply only to a custodial interrogation that took place on or after March 1, 2018.

SUPPORTERS SAY:

SB 1253 would foster greater transparency in the criminal justice system and remove any doubts about the integrity of confessions, leaving it to the judge or jury to weigh such evidence on its own merits. This bill would reduce the number of individuals that were wrongfully convicted based on faulty or coerced confessions.

OPPONENTS SAY:

SB 1253 could negatively affect the ability of counties with little flexibility in their budgets to prosecute very serious offenses. The Legislature should not make it more difficult for law enforcement to investigate the some of the most serious felonies.

NOTES:

Two companion bills, HB 229 by Canales and HB 3134 by Smithee, were referred to the House Committee on Criminal Jurisprudence.

SUBJECT: Regulating the storage and movement of used or scrap tires

COMMITTEE: Environmental Regulation — committee substitute recommended

VOTE: 8 ayes — Pickett, E. Thompson, Cyrier, Dale, Kacal, Landgraf, Lozano, E. Rodriguez

0 nays

1 absent — Reynolds

SENATE VOTE: On final passage, April 4 — 20-11 (Bettencourt, Buckingham, Burton, Campbell, Creighton, Hall, Hancock, Hughes, Kolkhorst, Schwertner, V. Taylor)

WITNESSES: None

BACKGROUND: The Solid Waste Disposal Act (Health and Safety Code, ch. 361) regulates the disposal of waste that could pose a health or environmental hazard. Sec. 361.112 regulates the storage, transportation, and disposal of used or scrap tires. This section prohibits a person from storing more than 500 used or scrap tires for any period on any publicly or privately owned property unless the person registers the storage site with the Texas Commission on Environmental Quality.

DIGEST: CSSB 570 would regulate the storage, transportation, and use of used or scrap tires and would establish penalties for violations of regulations related to the handling of used or scrap tires.

Storage of tires. CSSB 570 would require a used or scrap tire generator, including a tire dealer, junkyard, or fleet operator, who stored used or scrap tires outdoors to store the tires in a way that protected them from theft. A retailer who took possession of a scrap tire from a customer also would be required to store the tire securely.

Posting of tire rules. The bill would require a retailer to post a sign in a location readily visible to customers that specified the requirements for

the disposal of scrap and used tires. The Texas Commission on Environmental Quality (TCEQ) would be required to develop and make available on its website the language and specifications for the sign.

Registration. The bill would require a transporter or a tire processor not required to register as a storage site under sec. 361.112 to register annually with TCEQ and would give TCEQ the authority to revoke the registration under certain circumstances. A transporter would mean a person who collected used or scrap tires from another person to move them to a used tire dealer, scrap tire processor, end user, or disposal facility.

The bill would specify persons would not be required to register with TCEQ under this provision.

Insignia. CSSB 570 would require TCEQ to issue annually a registration insignia to each transporter, which would have to be displayed on each vehicle used to transport tires under the transporter's registration. The commission could adopt rules for issuing duplicate and multiple insignia.

Financial assurance. The bill would require a transporter or tire processor required to register with TCEQ to provide financial assurance by filing one of the following with the commission:

- a surety bond obtained from a surety company authorized to do business in the state;
- evidence of an established trust account; or
- an irrevocable letter of credit.

The bond, trust account, or letter of credit would be required to be in favor of the state and in an amount of $25,000 or more for a transporter and an amount adequate to ensure proper cleanup and closure of a site for a tire processor.

The bill would require any money received from a bond, trust account, or letter of credit to be used to clean up unauthorized tire sites where the transporter had delivered tires.

Contracting with transporters. CSSB 570 would allow a generator to contract for the transportation of used or scrap tires only with a transporter who was registered appropriately and had filed evidence of financial assurance. A generator who knowingly contracted with an unregistered transporter would be liable for any civil penalties for the illegal disposal of tires and criminal offenses involving the tires committed by the transporter.

Records of tires. The bill would allow customers to retain a scrap or used tire removed from their vehicle during the purchase of a tire and would require the retailer whose customer retained a tire to keep a record of the retention for at least three years.

The bill also would require a transporter of used or scrap tires to maintain records to assure that the tires were transported to registered storage sites or a facility authorized by TCEQ. A political subdivision or person who contracted with one would not be required to keep records of the transportation of used or scrap tires from a roadway it maintained or an easement adjacent to a such a roadway.

TCEQ would have to require a transporter of used or scrap tires to submit electronic annual reports on its records to the commission. Transporters that failed to do so would be ineligible to renew their registration.

Construction with tires. The bill would direct TCEQ to require a person who used more than 1,000 used or scrap tires in a construction project to obtain approval from the commission before using the tires. In considering approval, TCEQ would be required to consider potential effects on human health and the environment.

Violations. A reckless violation of certain provision of the bill or a rule adopted or terms of an order granted under Health and Safety Code, ch. 361 relating to used or scrap tires would be punishable for an individual by a fine of between $1,000 and $50,000 and/or confinement of up to one year. For a person other than an individual, a reckless violation would be punishable by a fine of $1,000 to $100,000. An intentional violation would be punishable for an individual by a fine of between $1,000 and $100,000 and/or confinement of up to two years and for a person other

than an individual by a fine of $1,000 to $250,000.

CSSB 570 would require TCEQ to adopt the rules necessary to implement the bill by March 1, 2018, and would not require a person to be registered as a transporter until September 1, 2018.

The bill would take effect September 1, 2017.

SUPPORTERS SAY:

CSSB 570 would help to enforce proper disposal of tires to keep consumers safe and the environment clear of dangerous tire piles by statutorily requiring that transporters be registered and that retailers implement anti-theft measures. Tires left unsecured are at risk of theft and subsequent illegal dumping, which costs the state millions of dollars to clean up and creates risks of fire, pollution, and environmental hazards.

The bill would codify certain rules and harness existing statute to help stop tire theft and dumping and would not increase the administrative burden on businesses.

OPPONENTS SAY:

CSSB 570 would impose unnecessary regulations on businesses to address issues that could be better handled through enforcement of current law. The bill also would diminish property rights by imposing anti-theft policies on individuals and retailers and by making generators liable for contracting with an unregistered transporter.

NOTES:

A companion bill, HB 3744 by Walle, was considered in a formal meeting of the House Committee on Environmental Regulation on April 27 and failed to receive affirmative votes in committee.

SUBJECT: Changing procedures for criminal defendants with mental illnesses

COMMITTEE: Public Health — committee substitute recommended

VOTE: 9 ayes — Price, Sheffield, Arévalo, Burkett, Coleman, Collier, Cortez, Guerra, Zedler

0 nays

2 absent — Klick, Oliverson

SENATE VOTE: On final passage, April 24 — 29-1 (Nichols)

WITNESSES: For — Gyl Switzer, Mental Health America of Texas; (*Registered, but did not testify*: Kathryn Lewis, Disability Rights Texas; Nelson Jarrin, Meadows Mental Health Policy Institute; Greg Hansch, National Alliance on Mental Illness Texas; Eric Kunish, National Alliance on Mental Illness Austin; Lee Johnson, Texas Council of Community Centers; Bryan Hebert, United Ways of Texas)

Against — None

On — (*Registered, but did not testify*: Rachel Samsel, Department of State Health Services; Courtney Harvey and Lauren Lacefield Lewis, Health and Human Services Commission)

BACKGROUND: Code of Criminal Procedure, art. 15.17 requires that arrestees go before a magistrate within 48 hours of being arrested to be informed of charges and of certain rights. Art. 16.22 requires a sheriff to notify magistrates within 72 hours if the sheriff has cause to believe that a person in custody has a mental illness or is a person with mental retardation. This can start a process of gathering and assessing information about the arrestee, including whether there is the potential that the defendant is incompetent to stand trial.

Code of Criminal Procedure, art. 17.032 establishes procedures for releasing on personal bond certain arrestees believed to have a mental

illness or believed to be a person with mental retardation who was competent to stand trial. Magistrates must release those who qualify, unless good cause is shown to do otherwise. To qualify, arrestees may not be charged with or have a previous conviction for certain violent offenses.

Arrestees also must be examined by a mental health expert. Magistrates must determine that appropriate community-based services are available and, unless good cause is shown to do otherwise, require treatment as a condition of release on personal bond if certain conditions are met. Code of Criminal Procedure, ch. 46B establishes the state's standards and procedures for determining if a criminal defendant is incompetent to stand trial.

Observers have noted lengthy waiting lists for defendants with mental illnesses or intellectual disabilities delay their admission to a state hospital to receive competency restoration services. Rather than requiring these defendants to spend the long waiting period in jail, a county jail-based competency restoration program and amendments to competency restoration procedures would help accelerate the time in which they receive mental health treatment.

DIGEST:

CSSB 1326 would revise the process of gathering and assessing information about an arrestee who may have a mental illness or an intellectual disability, amend statutes covering the release of certain mentally ill defendants on personal bonds, and allow counties to establish a jail-based competency restoration program. The bill also would replace references to mental retardation with references to intellectual and developmental disability.

Identification, screening of arrestees. The bill would place a reference to current proceedings used to identify defendants with mental illness or intellectual disabilities into the Code of Criminal Procedure, art. 15.17 provisions establishing magistrates' duties at initial hearings. Art. 15.17 would require that if magistrates were given notice of credible information that could establish reasonable cause to believe that a person before them had a mental illness or was a person with an intellectual disability, they would be required to start the proceedings.

The bill would shorten the time frame for sheriffs, including municipal jailers, to provide notice to magistrates about having credible information that may cause them to believe that someone in their custody had a mental illness or was a person with an intellectual disability. The notice would have to be given within 12 hours, rather than 72 hours, after receiving the information. The bill would exclude from this process defendants accused of class C misdemeanors (maximum fine of $500).

The time frame for local mental health and local intellectual and developmental disability authorities to provide additional information to the magistrate after an assessment would be shortened to require information within 96 hours after the time an order was issued for those held in custody and within 30 days for those released from custody, unless good cause was shown to do otherwise. Currently, information is required within 30 days after being ordered in felony cases and 10 days after orders issued in misdemeanor cases.

The bill would expand the places where courts could order defendants to submit to exams after a refusal to submit to the collection of information. Magistrates could order defendants to submit to exams at the jail or another place determined appropriate by a mental health or local intellectual and developmental disability authority, instead of only at a mental health facility. The maximum time that persons could be ordered to a facility to submit for this exam would be changed from 21 days to 72 hours.

The bill would expand the options that trial courts had after receiving the assessment of the person to include referring the defendant to one of the state's specialty courts, which include mental health courts. Courts currently are authorized to release defendants from custody on a personal or surety bond before, during, or after the collection of information, and the bill would authorize courts to place a condition on a bond in these situations to include a requirement that the person submit to an exam or an assessment.

Release on personal bond for certain defendants. The bill would amend the current directive to magistrates to release certain defendants, unless good cause was shown to do otherwise, on personal bond if certain

conditions were met. The current requirement applies when magistrates have an expert's assessment concluding that a person has a mental illness or an intellectual disability and the defendants met other requirements relating to their offense, criminal history, and other factors.

The bill would make the current requirement to release certain defendants on personal bonds apply without regard to a standing order by a judge, a bond schedule, or other statutory provisions restricting courts. The bill would add to the list of conditions that must be met before a magistrate may release these defendants on personal bonds. Magistrates would have to find that the release on personal bond would reasonably ensure the defendant's appearance in court and the safety of the community and the victim and could impose conditions on the bond to ensure these things. In making the finding, the magistrate would have to consider all the circumstances, a pretrial risk assessment, and information from the prosecutor and the defense.

The bill would amend the list of violent offenses that may disqualify these arrestees with mental illness or an intellectual disability from being released on personal bond. The bill would make the prohibition on assault offenses apply only to those whose assault charge or conviction involved family violence.

Jail-based competency restoration. For defendants charged with class B misdemeanors who have been determined incompetent to stand trial, courts would be required to commit the defendants to a jail-based competency program, release them on bond and order them to participate in an outpatient restoration program, or, under certain conditions, commit them to a facility for an initial restoration period. The commitment to the facility could occur only if jail-based and outpatient competency restoration programs were unavailable.

Defendants charged with class B misdemeanors first would have to be released on bail and ordered to participate in an outpatient competency restoration program, if certain conditions were met. The release on bail would have to occur if a court determined that the defendant was not a danger to others and could be safely treated as an outpatient and if an appropriate program was available. The release would have to include an

order to participate in an outpatient restoration program for up to 60 days and be subject to the court approving a comprehensive treatment plan.

Those charged with class A misdemeanors or higher also could be committed to a jail-based competency program or, as current law allows, committed for an initial restoration period to a facility or, if certain conditions were met, released on bail.

Defendants could be committed to jail-based competency restoration programs only if the program provider determined that the defendant would begin receiving services within 72 hours of arriving.

The bill would allow counties to jointly develop and implement a jail-based competency restoration program. The bill would establish criteria for providers of the jail-based competency services and their programs, similar to the criteria in current law for the state's pilot program in this area. The bill would add criteria requiring that a program operated in a space separate from that used for the general population of the jail, ensure coordination of general health care, provide mental health and substance use disorder treatment, and supply clinically appropriate psychoactive medications when administering court-ordered medications as applicable and in accordance with other laws governing court-ordered medication.

The bill would require the HHSC executive commissioner to adopt by November 1, 2017, any necessary rules for a county to develop and implement a jail-based competency restoration program.

Competency, education services, trial priority. The bill would establish a statutory definition of competency restoration. Competency restoration would be defined as treatment or education for restoring people's ability to consult with their lawyer with a reasonable degree of rational understanding and a rational and factual understanding of the court proceedings.

Upon receiving notice from a facility or program provider that a defendant had attained competency, a court would have to order the person to receive education about competency services in a jail-based competency restoration program or an outpatient program. If such a defendant had

been committed to a facility other than a jail-based facility for restoration, the court would send a copy of the order for education services to the facility where the person was committed and to other involved entities, including the sheriff. The facility would have 10 days to discharge a defendant into the care of the sheriff of the county where the court was located, and the sheriff would be required to transport the person to the jail-based or outpatient competency restoration program for the education services.

Sheriffs would be required to ensure that a defendant for whom they had custody for transportation involving competency restoration was provided with the types and dosages of medication that had been prescribed to the defendant, unless directed otherwise by the treating physician.

The bill would establish a new priority for trial court dockets. Criminal trials involving defendants whose competency to stand trial had been restored would have to be given preference over other civil or criminal matters, except for trials involving victims younger than 14 years old.

Information, reporting. Magistrates would have to submit monthly reports to the Office of Court Administration (OCA) on the number of assessments they received from experts determining competency to stand trial. The information provided to the magistrate would have to be on a new form approved by the Texas Correctional Office on Offenders with Medical or Mental Impairments (TCOOMMI). Courts no longer would have to forward certain other competency-related reports to TCOOMMI.

OCA would be required to provide courts information about best practices to address the needs of persons with mental illness in the court system. OCA also would be required to collect and report on information for fiscal 2018 about specialty courts and the outcomes of court participants who were persons with mental illness.

Effective date. The bill would take effect September 1, 2017, and would apply only to a defendant charged with an offense committed on or after that date.

SUBJECT: Updating procedures for the transfer of motor vehicles

COMMITTEE: Transportation — favorable, without amendment

VOTE: 9 ayes — Morrison, Martinez, Burkett, Y. Davis, Goldman, Pickett, Simmons, E. Thompson, Wray

0 nays

4 absent — Israel, Minjarez, Phillips, S. Thompson

SENATE VOTE: On final passage, April 25 — 31-0

WITNESSES: None

BACKGROUND: Transportation Code, sec. 501.072 requires the seller of a motor vehicle to provide the buyer a written disclosure of the vehicle's odometer reading at the time of the sale on a form prescribed by the Texas Department of Motor Vehicles. Sec. 501.076 allows certain written limited power of attorney agreements to be executed by vehicle owners.

Observers note that written odometer reading disclosures and power of attorney agreements take time to transfer and that transactions involving such forms could be completed more quickly with electronic forms.

DIGEST: SB 1062 would allow the odometer disclosure statement to be provided to a transferee electronically as long as the disclosure was in compliance with federal law and regulations.

The bill would require the Department of Motor Vehicles to provide a secure power of attorney form and a secure reassignment form for licensed motor vehicle dealers.

The bill would require the department to establish by rule a process to accept electronic signatures on secure documents that had been electronically signed through a system not controlled by the department. A system would have to verify the identity of the person signing the

document electronically and submit the document through an electronic titling system. The department would not be required to certify an electronic signature process or vendor before accepting a document with an electronic signature.

The bill would take effect January 1, 2018. The Department of Motor Vehicles would have to adopt rules to implement the bill by January 1, 2019.

NOTES: A companion bill, HB 1693 by Dean, was reported favorably from the Senate Committee on Transportation on May 17.